on the result of the case in that it would corroborate the evidence of the plaintiff himself on the question of fact which the learned judge had held against the plaintiff. However, in my view the plaintiff could have obtained Mr. Callow to give evidence at the trial if he had used reasonable diligence to discover his whereabouts and that he already knew that Mr. Callow could have corroborated his evidence in court. It would be apparent that the importance of Mr. Callow's evidence was only brought home to the plaintiff after the judge's* finding against him on the fact which could have been corroborated by Mr. Callow.

Suffian F.J.: This is an application for an order that the plaintiff/appellant be at liberty upon the hearing of his appeal to adduce further evidence.

To justify the reception of this evidence "three conditions must be fulfilled:

First, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial;

Second, the evidence must be such that, if given, it would probably have an important influence on the result of the case, although it need not be decisive;

Third, the evidence must be such as is presumably to be believed, or in other words, it must be apparently creditable, although it need not be incontrovertible."

These were the tests enunciated by Denning L.J. (as he then was) at page 748 in *Ladd* v. *Marshall*[1].

I do not think that the appellant has satisfied the first condition. He knew that Mr. Callow was at the material times chief architect at the Ministry of Education, that he had direct knowledge as to what drawings he (the appellant) was required (a) to trace, (b) to modify where necessary, and (c) to prepare new designs from Government drawings and the reasons which made the drawings necessary, and that Mr. Callow's evidence would therefore be important to the appellant's case. The appellant was not an ignorant and unrepresented rustic but the head of an important engineering firm represented by an eminent firm of solicitors. He contrived to trace Mr. Callow's address after judgment and I am of the opinion that it cannot be said that it could not have been obtained before the trial had he used reasonable diligence.

It is next said that, as Mr. Callow was the only officer of the Ministry of Education who had direct knowledge of the transactions in dispute, he would in the ordinary course have been called as a witness by the defendants, that he (appellant) had no reason to think that the defence would not call him as a witness and expected the defence to do so and that, if the defence had called him as a witness, it would have been improper for the appellant to make any approach to him prior to the hearing or to try to ascertain what evidence he would give. In support his counsel, Mr. Peddie, cites *Roe and Another* v. *Robert McGregor and Sons Ltd.; Bills* v. *Roe and Another*[2]. But here it is important to observe that the appellant knew that Mr. Callow was an expatriate officer who had left the country in 1962, i.e., about a year *before* he saw fit to file this claim against the Government, that he or his solicitors knew or should have known that it was most unlikely that the Government would call an expatriate officer who had long since left the country (the trial did not take place until 1967), that it was for him (the appellant) to establish his case and if he or his solicitors thought that Mr. Callow's evidence was all that crucial they could have asked whether the Government intended to call him. This they failed to do.

The Government turned the table on the appellant by themselves calling as their witness an ex-employee of the appellant whose evidence happened to be most damaging to the plaintiff's case. We do not know the arrangements between the two parties prior to the calling of Mr. Ho, but it is not suggested here that there was anything improper on the part of the Government. If the Government could have arranged to call Mr. Ho without any impropriety, the appellant also could have arranged to call Mr. Callow without any impropriety. There was no risk in the appellant properly approaching Mr. Callow for, unlike Mr. Harrison in *Roe's* case[2], he was not a possible claimant against the appellant.

I would therefore dismiss this application.

Ali F.J. concurred.

Application dismissed.

Solicitors: *Skrine & Co.*

* See [1970] 1 M.L.J. 20.

PUBLIC PROSECUTOR v. RAMASAMI

[A.Cr.J. (Wan Suleiman J.) March 4, 1970]

[Alor Star — Criminal Appeal No. 47 of 1968]

Constitutional Law — Citizenship — False statement in declaration for — Declaration would not be in the form of a statutory declaration — Citizenship Rules, 1964, r. 28 — Malaysia Constitution, 2nd schedule s. 16(1)(a).

The respondent had been charged with making a false statement in his declaration for citizenship but he was acquitted as the learned magistrate held that the declaration "was not in the form required of a statutory declaration".

Held, allowing the appeal: in this case there was no necessity to repeat a set formula of declaration. The respondent was charged with making a false statement and the officers were not required to take and receive the declarations but merely required to witness the signature of the applicant upon the prescribed form. In the circumstances the order of acquittal and discharge must be set aside and retrial ordered.

Cases referred to:-

(1) *Teh Kim Chooi* v. *R.* [1955] M.L.J. 37.

(2) *Velumailum* v. *Public Prosecutor* [1947] M.L.J. 152.

(3) *Public Prosecutor* v. *Munusamy* [1967] 1 M.L.J. 238 at p. 240.

MAGISTRATE'S CRIMINAL APPEAL.

Tunku Mukhatar bin Tunku Yaacob (Deputy Public Prosecutor) for the appellant.

Ismi bin Ismail for the respondent.

Wan Suleiman J.: The respondent was charged in the magistrate's court, Alor Star as follows: —

"That you on 21.6.1967 at the Registrar of Citizens Office. Alor Star, in the District of Kota Star, in the State of Kedah, did knowingly make a false statement in your declaration for citizenship to the Registrar of Citizens, Kedah, to *wit*, you stated that you have never been convicted of any criminal offence, whereas on 20.12.1963 you were convicted under section 16 Perak Nationality Enactment 2/1952 and fined $50, at Tanjong Malim magistrate's court vide case No. 145/1963, with a view of inducing the Registrar of Citizens, Alor Star to grant your application for Federal Citizenship, and that you have thereby committed an offence punishable under section 16(1)(a) of the 2nd Schedule of the Federal Constitution."

Evidence led by the prosecution showed that the respondent had applied to the Registration Officer, Alor Star, on the appropriate Form G which was produced and marked Exhibit P1 in the court below.

He was then taken by a clerk who also performed the duties of Tamil interpreter, before the assistant registration officer. The form had at that time already been filled in by the respondent. According to both the assistant registration officer and the clerk/interpreter, the particulars contained in this completed form were then explained by the interpreter to the respondent, who was then asked if he understood everything, to which he replied in the affirmative. The respondent then signed the form after which the contents were again read over and interpreted to him.

Inter alia, he declared in paragraph 22(b) that he had not been convicted or found guilty by a competent court in any country of a criminal offence.

Exhibit P1 was later returned to the registration officer by the registration department headquarters with the notification that the applicant/respondent had a previous criminal record. I should mention in passing that no proper proof of such criminal record was produced. However, since the learned magistrate acquitted and discharged the respondent under the powers given to him by section 173 (g) of the Criminal Procedure Code, when the prosecution had clearly not closed its case, for completely different reasons, nothing more need be said about what would otherwise be a failure to prove a necessary ingredient of the charge.

The learned magistrate in acquitting the respondent was clearly influenced by the decision in *Teh Kim Chooi* v. *Regina*[1]. In that case the appellant was charged under the Statutory Declarations Ordinance, 1949, and one of the two grounds of appeal was that the words "Declared at . . . this . . . day of . . . before me" which appeared in the prescribed form of declaration in the schedule to the Ordinance had been omitted from the declaration form. It was held on appeal that failure to include these words in effect meant that the declaration was one which any court of law was not bound or authorised by law to receive as evidence of any fact and was therefore not a declaration within the meaning of section 199 of the Penal Code. With that finding I would respectfully agree.

In *Teh Kim Chooi's* case the learned judge referred to an earlier decision — *Velumailum* v. *Public Prosecutor*[2]. The appellant in that case had also been charged under section 199 of the Penal Code for knowingly having made false statements in a declaration made before a presiding officer touching certain matters material to the object for which the declaration was made. However certain words prescribed by the Statutory Declarations Enactment, Johore, — the words "and by virtue of the Statutory Declarations Enactment" had been omitted from the declaration form signed by the appellant. Laville J. in exercise of his revisionary powers, set aside the conviction and sentence imposed on the appellant who had pleaded guilty in the lower court. In doing so he held that the words above-mentioned gave the sanction of the Enactment to the declaration and without these sanctioning words the statement made by the appellant, though in form purporting to be one which can be accepted as evidence was not such a one and the statement though wilfully false and made for the purpose of fraud, was not criminally punishable. I would again respectfully agree with this finding.

However, the charge against the respondent in the present appeal is not one made punishable under any of the statutes governing statutory declarations. In this appeal the charge is one for making a false statement in an application for citizenship and the relevant law is to be found in the Federal Constitution and the Rules made thereunder. The punishment section (section 16(1) of 2nd Schedule of the Federal Constitution) reads as follows: —

"It shall be an offence punishable with imprisonment for two years or a fine of one thousand dollars or both for any person —

(a) knowingly to make any false statement with a view to inducing the Minister to grant or refuse any application under Part III of this Constitution, including any application to determine whether the applicant is a citizen by operation of law."

Part III of the Constitution is the Part which deals with citizenship.

This "declaration" in the application form Exhibit P1, it seems to me, is nothing more than a statement made by the applicant/respondent, and a statement to give it its ordinary dictionary meaning is "a written or oral communication setting forth facts, arguments, demands or the like" (see the Shorter Oxford English Dictionary).

However it is nevertheless a declaration which is, as Chang Min Tat J. said in *Public Prosecutor* v. *Munusamy*[3] under prescribed penalties required to be true.

Arising out of the learned magistrate's erroneous assumption that the declarations or statements made in the application for citizenship is meant to be a statutory declaration under the Statutory Declarations Act, 1960, is the resulting doubts appearing in his grounds of judgment whether the assistant registration officer before whom respondent had signed form Exhibit P1 was, to quote his own words, "authorised to administer an oath by virtue of section 2 of the Statutory Declarations Act, 1960".

Under rule 2 of the Citizenship Rules, 1964 (L.N. 82 of 1964), the term "Registrar" includes an Assistant Registrar of Citizens. Rule 28 reads: —

"No application for citizenship shall be accepted unless it is presented at a citizenship office by the applicant in person *who shall be required to sign the application in the presence of a Registrar of Citizens.*"

There can be no doubt therefore that in accordance with rule 28 there is no necessity to repeat a set formula of declaration, a procedure which appears to be a legal requirement in declarations made under the Statutory Declarations Act, 1960, and the earlier Enactments and Ordinances repealed by that Act. The Registrar and Assistant Registrar of Citizens unlike those functionaries mentioned in section 2 of the Act are not in my view expected to "take and receive" declarations but are merely required to witness the signature of an applicant upon the prescribed form.

Since the learned magistrate has nowhere in his judgment stated that he disbelieved any part of the testimony of those prosecution witnesses who had been called to give evidence, I am satisfied that his acquittal of the respondent under section 173 (g) of the Criminal Procedure Code was wrong in law.

Accordingly this appeal is allowed and the order of acquittal and discharge set aside. I have been given to understand that the learned magistrate who heard this case has since retired and I therefore order a retrial.

Appeal allowed. Retrial ordered.

Solicitors: *Jayadeva, Zahir & Ismi.*

LIM JOO TONG v. KOH JOO CHUA

[O.C.J. (Wee Chong Jin C.J.) March 17, 1970]

[Singapore — Suit No. 606 of 1969]

Damages — Personal injuries — Interest — Award of — Discretion of court — Civil Law Ordinance (Cap. 24) s. 8.

In this case after the court having found in favour of the plaintiff in his claim for damages for personal injuries, his counsel asked the court to award interest under section 8 of the Civil Law Ordinance.

Held: (1) the power given under section 8 of the Ordinance is a discretionary one. The words "the court may, if it thinks fit" enable a judge, viewing the matter broadly and if in his opinion the circumstances warrant it, to exercise the discretion given to him to award interest on the damages;

(2) having regard to this unfettered discretion it is undesirable to enumerate under what circumstances and what are the elements which ought to be present before interest should be awarded. It is wrong to attempt to lay down the principles which should be acted on by a judge when considering a claim for an award of interest under section 8 as that would amount to an attempt to impose a fetter on what is an unfettered discretion which a judge has under that section.

[Editorial Note: Reference may be made to *Ban Pet Hock* v. *Ong Ah Ho* [1966] 2 M.L.J. 253 digested in §3592 in *Mallal's* Digest 3rd edn. and cases etc. mentioned in the annotation thereto, and also *Yee Boon Heng* v. *Tan Chwee* [1967] 2 M.L.J. 157 digested in §3593 in *Mallal's* Digest, *supra.* In England awarding interest on damages is mandatory, see [1970] 1 M.L.J. xli.]

Case referred to:-

(1) *Jefford* v. *Gee* [1970] 2 W.L.R. 702.

CIVIL SUIT.

H. E. Cashin for the plaintiff.

M. P. D. Nair for the defendant.

Cur. Adv. Vult.

Wee Chong Jin C.J.: At the conclusion of the hearing I gave my reasons for finding in favour of the plaintiff and holding that the defendant was solely to blame for the injuries sustained by the plaintiff as a result of the collision between the plaintiff's motorcycle and the defendant's motor-car.

Mr. Cashin asks the court to award interest under section 8 of the Civil Law Ordinance, the relevant provisions of which are as follows: —

"In any proceedings tried in any court of record for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the period between the date when the cause of action arose and the date of the judgment."

While admitting that our High Court has never, to his knowledge, awarded interest in personal injury cases, he contends that as a very recent decision of the English Court of Appeal has set out the principles to be applied in awarding interest in personal injury cases, those principles should guide the High Court in considering claims by a successful plaintiff in personal injury cases. The case is *Jefford* v. *Gee*(1) reported in the London *Times* issue of 5th March 1970. The judgment of the Court of Appeal was delivered by the Master of the Rolls in which he said —

"Gathering together the best of the reasoning from those various sources. the principles to be applied in awarding interest in personal injury cases were: interest should not be awarded as compensation for the damage done; it should only be awarded to a plaintiff for being kept out of money which ought to have been paid to him.

Special damages should be dealt with on broad lines. Losses, expenditure and receipts should all go into one pool. In all ordinary cases it would be fair to award interest on the total sum of special damages from the date of the accident until the date of trial at half the rate allowed on the other damages. Where the loss or damage to the plaintiff was future pecuniary loss (loss of future earnings) there should in principle be no interest. The plaintiff would not have been kept out of any money.

When the compensation payable to a plaintiff was for pain, suffering and loss of amenities, he should be awarded interest on it. But such interest should not run from the date of the accident because such misfortunes had to be quantified later. The court always awarded compensation for them in one indivisible lump sum. Interest should be awarded on that lump sum as from the time when the defendant ought to have paid it but did not. Interest on damages for pain, suffering and loss of amenities should run from the date of service of the writ to the date of trial. That should stimulate the plaintiff's advisers to issue and serve the writ without delay."

It should be noted, however, that the Court of Appeal, though dealing with a case which was tried before section 22 of the Administration of Justice Act, 1969 which makes it compulsory for courts to award interest in personal injury cases from 1st January 1970, was attempting to set out the principles on which a court should act in awarding interest under section 22 of the Administration of Justice Act, 1969. In the present case the power given under section 8 of the Civil Law Ordinance to award interest on damages is a discretionary one and in my opinion, having regard